

HOUSE No. 698

By Mr. Swan of Springfield, petition of Benjamin Swan for legislation to establish standards of conduct for district attorneys subject to the jurisdiction of the Disciplinary Board of the Supreme Judicial Court. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO ESTABLISH STANDARDS OF CONDUCT FOR DISTRICT ATTORNEYS; AND PROVIDE FOR DUTIES OF THE SUPREME JUDICIAL COURT AND FOR PENALTIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Notwithstanding any law to the contrary, this act
2 is to establish ethical standards for district attorneys.
- 3 (a) General Rule. District attorneys and assistant district attor-
4 neys, and employees of the district attorney in counties or districts
5 shall be subject to Massachusetts laws and rules and local court
6 rules governing attorneys, including the rules of professional con-
7 duct, where the attorney engages in the duties of district attorney
8 to the same extent and in the same manner as other attorneys in
9 that jurisdiction.
- 10 (b) Violations. No district attorney or assistant district attorney
11 shall:
- 12 (1) in the absence of probable cause seek the indictment of any
13 person;
- 14 (2) fail promptly to release information that would exonerate a
15 person under indictment;
- 16 (3) intentionally or knowingly misstate evidence;
- 17 (4) intentionally or knowingly alter evidence;
- 18 (5) intentionally mislead a court as to the guilt of any person;
- 19 (6) attempt to influence or color the testimony of a witness;
- 20 (7) act to frustrate or impede a defendant's right to discovery;
- 21 (8) offer or provide sexual activities to any government witness
22 or potential witness;

- 23 (9) leak or otherwise improperly disseminate information to
24 any person during an investigation;
25 (10) knowingly misstate statutory or case law; or
26 (11) engage in conduct that discredits the office of the District
27 Attorney.
- 28 (c) Penalties. Persons violating the provisions described in sub-
29 section (b) shall, upon finding that a violation occurred, be subject
30 to:
- 31 (1) Probation.
 - 32 (2) Demotion.
 - 33 (3) Dismissal.
 - 34 (4) Referral of ethical charge to the bar.
 - 35 (5) Loss of pension or other retirement benefits.
 - 36 (6) Suspension from employment.
 - 37 (7) Referral of the allegations, if appropriate, to a grand jury for
38 possible criminal prosecution.

1 SECTION 2. Complaints.

- 2 (a) Written statement. A person who believes that a district
3 attorney or employee of the office of district attorney in a county
4 or district has engaged in conduct in violation of Section 1, may
5 submit a written statement to the Disciplinary Board of the
6 Supreme Judicial Court of Massachusetts, in such form as the
7 Supreme Judicial Court may require, describing the alleged con-
8 duct.
- 9 (b) Preliminary investigation. Not later than thirty days after
10 receipt of a written statement submitted under subsection (a), the
11 Supreme Judicial Court Disciplinary Counsel shall conduct a pre-
12 liminary investigation and determine whether the allegations con-
13 tained in such statement warrant further investigation.
- 14 (c) Investigation and penalty. If the Supreme Judicial Court,
15 upon receipt of findings by the Supreme Judicial Court Disciplinary
16 Counsel, determines that further investigation is warranted,
17 the court shall within ninety days further investigate the allega-
18 tions and, if the court determines that a preponderance of evidence
19 supports the allegations, impose an appropriate penalty.

1 SECTION 3. Definitions. The following words and phrases
2 when used in this act shall have the meanings given to them in
3 this section unless the context clearly indicates otherwise:

4 “Employee.” The term shall include, but not be limited to, an
5 attorney, investigator, special prosecutor or other employee of the
6 office of district attorney in a county or district as well as an
7 attorney, investigator, accountant or a special prosecutor acting
8 under the authority of the office of district attorney.

1 SECTION 4. Effective Date. This act shall take effect ninety
2 days after passage.